CITATIONS—(Cases Continued)

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. _____

THE LEITER MINERALS, INC.,

Petitioner,

versus

UNITED STATES OF AMERICA, ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above-entitled case on June 30, 1955.

CITATIONS TO OPINIONS BELOW.

The opinion of the District Court (R. 262-276) is reported in 127 F. Supp. 439. The opinion of the Court of Appeals (R. 299-305) is reported in 224 F. (2d) 381, and for convenience is printed in Appendix B hereto, *infra*, p. 19, *et seq.*

JURISDICTION.

The judgment of the Court of Appeals was entered on June 30, 1955 (R. 306). A petition for rehearing, timely filed by petitioner, was denied on October 14, 1955 (R. 315). The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1).

It is recognized that ordinarily this Court will not review an interlocutory decision, but that rule of practice has no application where, as here, there was "an insuperable objection to the maintenance of the suit in point of jurisdiction"; and where, also as here, it appears that the decree granting the preliminary injunction against petitioner's prosecution of the previously filed *in rem* title suit in the State Court "was the result of an improvident exercise of judicial discretion", *Meyer v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 52, 82 L. Ed. 638, 645. It is, therefore, appropriate that at this stage of the proceedings the interlocutory decree granting the said preliminary injunction be reviewed because the decree involves "an issue fundamental to the further conduct of the case * * *", *United States v. General Motors Corp.*, 323 U. S. 373, 377, 89 L. Ed. 311, 318; *Land v. Dollar*, 330 U. S. 731, 735, 91 L. Ed. 1209, 1214.

QUESTIONS PRESENTED.

Whether the United States, in connection with its *in rem* action filed in Federal Court, may enjoin a previously filed and pending *in rem* action in a State Court of concurrent and coordinate jurisdiction, or whether, as petitioner contends, the subsequently filed *in rem* action in Federal Court must be dismissed or abated, or, at least, stayed, pending the determination of the State Court suit.

This basic question involves the subsidiary questions of (1) whether the United States District Court has exclusive jurisdiction to determine the title of the United States to real property; or (2) as petitioner contends, whether the United States may be required to intervene in the previously instituted *in rem* suit pending in the State Court.

STATUTES INVOLVED.

There is not squarely involved any Federal or State statute, although there are incidentally involved the provisions of the Federal and State statutory law to which we now briefly refer.

Title 28, *U. S. C., Section* 2283, is the present congressional affirmation of the general rules of comity which are brought into play in the instant controversy. This Statute reads:

> "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments. June 25, 1948, c. 646, 62 Stat. 968."[1]

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[1]The great weight of lower court authority (see Moore's Commentary on the U. S. Judicial Code, p. 408, and lower court cases contained in footnote 54b on that page) is to the effect that the prohibition of Section 2283 does not apply to suits by the United States in its Courts, and that, in proper cases, an injunction may issue against state court proceedings. This in no way militates against the principle invoked by petitioner below, and asserted here, that the United States may not maintain a suit in the Federal Courts that interferes with a valid and subsisting in rem, or quasi in rem, jurisdiction of a state court.

The procedural basis for petitioner's previously filed State Court real action, now temporarily enjoined by the Court below, is *Article* 43 *of the Louisiana Code of Practice*, reading as follows:

> "43. *Parties defendant—Lessee's duty to declare name of lessor.*—The petitory action, or one by which real property, or any immovable right to such property may be subjected, is claimed, *must be brought* against the person who is in the actual possession of the immovable, *even if the person having the possession be only the farmer or lessee.*[2]
>
> "But if the farmer or lessee of a real estate be sued for that cause of action, he must declare to the plaintiff the name, and the residence of his lessor, who shall be made a party to the suit, if he reside in the State, or is represented therein, and who must defend it in the place of the tenant, who shall be discharged from the suit."

Further in connection with the position of petitioner there is involved *Article* 392 *of the Louisiana Code of Practice*[3], reading as follows:

> "392. *Court in which intervention had.*—The plaintiff in intervention must institute his demand before the court in which the principal action has been brought; *being considered as plaintiff*, he must follow the jurisdiction of the defendant."

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[2]All emphasis by petitioner unless otherwise noted.

[3]Article 392 and the Louisiana jurisprudence thereunder are one of the bases of petitioner's contention that to require the United States to intervene in the pending and previously filed State Court real action would not make the United States a party defendant being sued without its consent.

Finally, there is indirectly involved consideration of Act 315 of the Legislature of Louisiana for the year 1940 (Louisiana Revised Statutes 9:5806), since it is this 1940 Louisiana Act upon which petitioner's claim, on the merits, to the minerals involved in the two *in rem* suits is based. This Louisiana Act is printed in Appendix A, *infra*, p. 18.

STATEMENT.

Petitioner filed its State Court petitory action (R. 192-204)[4] in the Twenty-fifth Judicial District Court in and for Plaquemines Parish, Louisiana, on August 13, 1953. The petitory action in Louisiana is one of the recognized types of real action. (See *Article 43, Louisiana Code of Practice, supra*, p. 4.) It is only the minerals (or mineral rights) under the land in Plaquemines Parish which are involved in the State Court action, as well as in this, the subsequently filed, Federal Court suit. In Louisiana the minerals (or mineral rights) involved in both suits constitute immovable, or real, property. *Shaw v. Watson*, 151 La. 893, 92 So. 375. Under Louisiana law oil and gas in place are not subject to ownership, as specific things apart from the soil which they underlie; and since in Louisiana there can be no mineral estate in oil and gas as such, the sale or reservation of minerals is merely a grant or retention of right to go on land for exploration or exploitation of minerals, constituting a real right in the nature of a servitude or easement, which in

[4]The Leiter Minerals, Inc. v. The California Company, et al., No. 3282, Plaquemines Parish, Louisiana.

turn prescribes, or expires by limitation, in ten years if not used.[5]

Petitioner's State Court action, as expressly authorized and required by the Louisiana Code of Practice, was brought against The California Company, the operator under subleases from Allen J. Lobrano, and against Lobrano as holder of leases granted to him by the United States. The State Court action was properly brought against these parties, as the State Judge, District Judge Bruce Nunez, ultimately held prior to the time that petitioner was restrained from proceeding in the State Court suit. (See decision of Judge Nunez, R. 27-32, and authorities therein cited.)

After a futile[6] attempt had been made by The California Company and Lobrano to remove petitioner's State Court action to the United States District Court for the Eastern District of Louisiana, the State Court defendants filed various exceptions (R. 24-26), challenging the jurisdiction of the Plaquemines Parish Court, and further urging that there was the absence of an indispensable party in the State Court action (*viz.*, the United States), and, finally, that the State Court petition disclosed no cause or

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[5]This has been the settled law of Louisiana since the 1922 decision of **Frost-Johnson Lumber Co. v. Salling's Heirs, et al.**, 150 La. 756, 91 So. 207. On the merits of the present title controversy, in both the State and Federal Court cases, the fundamental question involved is whether the 1938 mineral reservation in the sale to the United States by petitioner's predecessor in title was made "imprescriptible" by Louisiana Act 315 of 1940 (printed in full in Appendix A, **infra**, p. 18).

[6]In ordering the action remanded to the State Court District Judge J. Skelly Wright noted: "A federal question may be 'lurking in the background' in this case, but its presence is not sufficiently disclosed by plaintiff's petition, nor is the question, if present, a substantial one."

right of action (which last exceptions, in Louisiana, are similar to a general demurrer).

In due course the exceptions in the State Court suit were presented to the State District Court on oral argument and briefs, and on March 23, 1954, Judge Nunez overruled all of the exceptions, handing down written reasons (R. 27-32).

On March 17, 1954, shortly before the State District Judge ruled upon the exceptions filed in the State Court proceeding, the present action (R. 2-24) was commenced by the United States in the Federal Court for the Eastern District of Louisiana. The present action, which is one to quiet the title of the United States to the same mineral rights which are made the subject of the title suit in the State Court, was, therefore, filed over seven months after the commencement of the State Court suit, and after issue had been joined by the defendants in the State Court.

Coupled with the prayer of the United States in the present action to have its title quieted, and to have the alleged "clouds" upon its alleged title cancelled and removed, is the prayer of the United States that petitioner be enjoined from claiming any further interest in the property, and particularly that petitioner be enjoined from prosecuting the State Court suit (R. 18-19).

The complaint in the Federal Court suit was met by petitioner's motion to dismiss or abate, or, alternatively, for a stay of, the subsequently filed Federal action. Petitioner's motion was based upon the pendency of the petitory action previously brought by petitioner in the Louisiana State Court, and upon the familiar rule that

where two actions are pending in courts of coordinate jurisdictions, and where the two actions are *in rem*, or *quasi in rem*, the Court which is subsequently resorted to is disabled from exercising any power over the property in litigation, or from interfering with the already pending litigation itself.

The District Court overruled petitioner's motions (R. 262-276), and proceeded at the same time to enter the temporary injunction prayed for by the United States; and on petitioner's appeal[7] the Court of Appeals for the Fifth Circuit affirmed (R. 299-305).

REASONS FOR GRANTING THE WRIT.

1. The decisions of the Courts below in the instant case are directly in conflict with the decision of this Court in *United States v. Bank of New York & Trust Co.*, 296 U. S. 463, 80 L. Ed. 331 (1936), and the attempts of the Lower Courts in this case to distinguish the *Bank of New York & Trust Co.* case are not well founded. In *United States v. Bank of New York & Trust Co.*, this Court held that the "priority-of-jurisdiction" rule was fully applicable to the United States, and that, therefore, the United States was not entitled to proceed in the Federal Court to establish its title to certain Russian Insurance Company funds allegedly assigned to the Government by the Republic of Russia where jurisdiction over the funds had already

[7]Although the right of appeal from the District Court's interlocutory order of injunction is expressly conferred by Title 28, U. S. C., Section 1292, only in respect of the injunctive feature of the order, the appellate jurisdiction also embraces that portion of the order which overruled petitioner's motion to dismiss or abate, inasmuch as the said motion is basic to and underlies the injunctive order itself. **Deckert v. Independence Shares Corp.**, 311 U. S. 282, 85 L. Ed. 189.

been assumed in state court actions pending in State district courts of New York.

In the instant case, the Court of Appeals, in seeking to distinguish the *Bank of New York & Trust Co.* case, said (R. 304) that the funds in that case were "in the possession of 'stakeholders' or 'depositaries' of the state court", the intimation being that the *res* in the state court in that case was *in custodia legis* in connection with liquidation proceedings brought by the New York Superintendent of Insurance. But in two[8] of the cases the liquidation had been completed, and in at least one of the three cases the only state court suit that was pending was a suit between the Russian insurance company and its sole surviving director claiming ownership or other appropriate disposition of the funds. In other words, there was in the New York state courts a pending "title suit" to the funds which were on deposit in the Bank of New York & Trust Company. The funds were not under seizure or *in custodia legis.* Nevertheless, the United States was held not authorized subsequently to bring its "title" suit in the Federal Court to secure recognition of its ownership of, and right to possession to, the funds over which state court litigation was already pending, and the Federal Court suit of the United States was dismissed.

Again in the present case the Court of Appeals (R. 303) stated that the United States "is an indispensable party" in petitioner's previously filed State Court suit. The same situation existed in the *Bank of New York & Trust Co.* case, where obviously the United States had not

[8]There were three separate actions which were consolidated for decision by this Court, one of which, the title case, involved the respondent Bank of New York & Trust Co.

been joined as a party defendant in the suits over the funds which were filed in the New York state court.

And yet again, the Court below held inapplicable (R. 304) the "rule as to in rem actions" which petitioner invoked, saying that that rule is applicable only to "State and Federal courts of concurrent jurisdiction", and that "it has no application here because the District Court, wherein the United States is plaintiff, *has exclusive jurisdiction* to determine the title of the United States to the minerals and mineral rights claimed by [petitioner]". This quoted holding of the Court below is directly at odds with the precise holding of the *Bank of New York & Trust Co.* case (296 U. S. 479, 80 L. Ed. 339), that the fact that the complainant is the United States does not justify a departure from the *in rem*, or priority of jurisdiction, rule, and that "the grant of jurisdiction to the District Court in suits brought by the United States does not purport to confer exclusive jurisdiction."

Still again, the holding of this Court in the *Bank of New York & Trust Co.* case that the United States would be required to present its claim in the State Court proceedings, and that in doing so the United States would not be taking "the position of a defendant,—being sued without its consent" is in the present case directly opposed by the holding of the Lower Court, which said (R. 303-304) that "the United States cannot lawfully intervene in the pending state court action as a party defendant as appellant argues it can and must because no officer or agent of the United States has the power or authority to litigate the title of the United States in the state court action." In this connection, petitioner's position was misstated by the Court below in the next preceding quota-

tion, as petitioner has never suggested that the United States intervene in the State Court action as a *defendant.* Under Louisiana practice the United States, as intervener in the State Court proceeding, would of necessity "be considered as plaintiff".[9] The Louisiana practice in regard to the position of interveners is perfectly in harmony with Your Honors' ruling in the *Bank of New York & Trust Co.* case, where you held:

> "There is no merit in the suggestion that the United States, in presenting its claim in the state proceedings, would be compelled to take the position of a defendant,—being sued without its consent. In intervening for the presentation of its claim, the United States would be an actor—voluntarily asserting what it deemed to be its rights—and not a defendant. We cannot see that there would be impairment of any rights the United States may possess, or any sacrifice of its proper dignity as a sovereign, if it prosecuted its claim in the appropriate forum where the funds are held."

The reliance of the Lower Court on the four decisions[10] of this Court which it cited is entirely misplaced.

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[9]Louisiana Code of Practice Article 392, supra, p. 4. See also the latest decision of the Louisiana Supreme Court in **State, ex rel. Pope v. Bunkie Coca-Cola Bottling Co.**, 222 La. 603, 63 So. (2d) 13, 14 (1953), holding: "It follows that while an intervener is considered as plaintiff, insofar as he must follow the jurisdiction of the defendant, he is, nevertheless a plaintiff in intervention who fights for his own hand; that is, he does not lose his identity in that of the original plaintiff, neither does he lose such identity in that of the original defendants."

[10]**United States v. Shaw**, 309 U. S. 495, 60 S. Ct. 659, 84 L. Ed. 888; **United States v. U. S. Fidelity & Guaranty Co.**, 309 U. S. 506, 60 S. Ct. 653, 84 L. Ed. 894; **Stanley v. Schwalby**, 162 U. S. 255, 16 S. Ct. 754, 40 L. Ed. 960; and **Carr v. United States**, 98 U. S. 433, 25 L. Ed. 209.

In none of these four cases was the priority-of-jurisdiction, or *in rem*, rule involved, and this rule upon which petitioner relies is consonant with the immunity-from-suit rule for which these cited cases stand.

In neither of the Courts below were there any other reasons advanced for the inapplicability of the priority-of-jurisdiction rule than as has already been suggested in this petition. Nor could there have been advanced any other valid reason. The State and Federal Court suits in the present matter both qualify as *in rem*, or *quasi in rem*, actions.[11]

It is no test of the applicability of the principle which petitioner has invoked that the mineral rights which constitute the immovable *res* at stake in the respective State and Federal actions, are not presently under actual seizure, or that the property is not currently held *in custodia legis*.[12]

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[11]Louisiana Code of Practice, Article 43; **Ferriday v. Middlesex Banking Co.**, 118 La. 770, 43 So. 403 (where the exact converse of the present situation existed,—and where the Louisiana Supreme Court stayed further proceedings in the subsequently filed State Court petitory action, by reason of the prior pendency of a petitory action in Federal Court); **Toucey v. New York Life Ins. Co.**, 314 U. S. 118, 86 L. Ed. 100; **Chittenden v. Brewster**, 2 Wall. 191, 17 L. Ed. 839; **Covell v. Heyman**, 111 U. S. 176, 28 L. Ed. 390, 393; **Orton v. Smith**, 18 How. 263, 15 L. Ed. 393; and **Westfeldt v. North Carolina Mining Co.**, 166 Fed. 706 (per Mr. Chief Justice Fuller, sitting as Circuit Justice).

[12]**United States v. Bank of New York & Trust Co., supra; Farmers Loan & T. Co. v. Lake Street Elevated R. Co.**, 177 U. S. 51, 44 L. Ed. 667; **Princess Lida v. Thompson**, 305 U. S. 456, 83 L. Ed. 285. And see **Emil v. Hanley**, 130 F. (2d) 369, 370, where Circuit Judge Learned Hand accurately said that "for priority between courts in point of jurisdiction depends, not upon the day when the property comes into their possession but upon that of the commencement of the first suit in which possession can be taken."

2. Petitioner, in the alternative, has contended from the inception of this matter (R. 37) that the present Federal suit should be stayed until the final determination of the previously filed State Court suit, for the further reason that "the said pending litigation in said State Court involves questions of State law which should be determined and decided by the State Courts, in that said determination will provide a binding rule of decision upon this Court, and further said State Court decision may render a decision of federal constitutional questions unnecessary."

Although petitioner strenuously asserted this alternative proposition in the Court below, the Court of Appeals disregarded, and did not even mention, this point which is well supported by authority. *Spector Motor Service v. McLaughlin*, 323 U. S. 101, 89 L. Ed. 101, 103. Cf., *Meredith v. City of Winter Haven*, 320 U. S. 288, 88 L. Ed. 9, 14. As Mr. Justice Frankfurter expressed the rule in the *Spector Motor Service* case:

> "And so, as questions of federal constitutional power have become more and more intertwined with preliminary doubts about local law, we have insisted that federal courts do not decide questions of constitutionality on the basis of preliminary guesses regarding local law."

As the District Judge in this case correctly said (R. 272), "the ownership of these mineral rights will turn on an interpretation of a state statute" of Louisiana. The statute in question, as we have already noted, is Act 315 of the Legislature of Louisiana for 1940 (Louisiana Revised Statutes 9:5806), quoted in Appendix A, *infra*,

p. 18). This Statute has been held to be retroactive by the Court of Appeals, Fifth Circuit, in *United States v. Nebo Oil Co.*, 190 F. (2d) 1003, affirming the decision of the District Judge, 90 F. Supp. 73. The same conclusion was reached by the Louisiana Supreme Court in *Whitney Bank of New Orleans v. Little Creek Oil Co.*, 212 La. 949, 33 So. (2d) 693. However, the Supreme Court of Louisiana has not yet rendered any decision (as it would be required to do in petitioner's pending and now enjoined State Court suit) in respect of a mineral reservation contained in a deed from a vendor directly in favor of the United States, as is the situation on the merits in the present controversy; and such an important question of local law, involving as it does the legislatively avowed public policy of Louisiana, should require the Federal Court to refuse to entertain jurisdiction of such a question, rather than to make "guesses" at what the State decision ultimately may be.[13]

This "doctrine of abstention" therefore appears particularly appropriate in the present matter, where,

[13]The decision of State Judge Nunez in the presently enjoined State action, which is, of course, not presented for consideration or decision at this time, was based upon his analysis and interpretation of the language of the subject mineral reservation. Judge Nunez determined that the alleged conventional termination date of the mineral servitude, to-wit: April 1st, 1945, related only to the right of entry, and did not affect the mineral reservation as a whole, (R. 31, 32). Even if the question on the merits were to be debated upon the plane selected by opposing counsel (i. e., that the 1940 Louisiana Act relates only to prescription for non-user, and not to a mineral servitude with a contractual termination date), there would still remain, among other problems, the important question of whether the Louisiana Statute would apply as well to a conventional period of limitation as it does to the statutory or codal limitation or prescription of ten years, as petitioner seriously contends. Cf., **Ray v. Liberty Industrial Life Ins. Co.**, (La. App., 1938), 180 So. 855.

upon the merits, the question of the controverted title to the mineral rights must be resolved primarily and ultimately upon an application of Louisiana law. It will not do to say that the Government's title to the minerals involved in this controversy must be determined by some law of property foreign to Louisiana, inasmuch as Congress has not acted (and it is questionable whether Congress could constitutionally have acted)[14] in respect of the ownership of the mineral question. As Mr. Justice Rutledge said for the Court in *United States v. Standard Oil Co.*, 332 U. S. 301, 308, 91 L. Ed. 2067, 2072:

> "It is true, of course, that in many situations, and apart from any supposed influence of the Erie decision, rights, interests and legal relations of the United States are determined by application of state law, where Congress has not acted specifically. * * * The Government, for instance, may place itself in a position where its rights necessarily are determinable by state law, as when it purchases real estate from one whose title is invalid by that law in relation to another's claim."

3. Manifestly, the questions presented are of vital importance, and the decision below is wholly inconsistent with the previously "long recognized duty of this Court to give effect to such 'methods of procedure as shall serve to conciliate the distinct and independent tribunals of the States and of the Union, so that they may cooperate as

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[14] In **Humble Oil & Refining Co. v. Sun Oil Co.**, 191 F. (2d) 705, 713 (1951), Circuit Judge Holmes for the Court of Appeals, Fifth Circuit, said: "The federal constitution reserved to the states at least as much legislative power to alter equitable rights as it did legal rights; in fact, land law has always been deemed a matter of local sovereignty; this was true even under Swift v. Tyson, 16 Pet. 1, 10 L. Ed. 865."

harmonious members of a judicial system coextensive with the United States' ".[15]

Although the District Judge in the present case expressed awareness of the delicacy and difficulty of the problem presented by the requested injunction against the State proceeding (R. 265), and although he further acknowledged that "one of the highest duties of a federal court sittting in equity is to avoid unseemly conflict of authority between state and federal courts" (R. 266), the decisions of the Lower Courts disobey the rule which apparently the Lower Court recognized as generally valid.

The great importance of the present case and the questions presented has been repeatedly attested by counsel for the United States. At a very early stage in the proceedings, and before the District Judge had rendered his decision overruling petitioner's motion to dismiss, and granting the temporary injunction against the State action, the Department of Justice filed a special memorandum opposing petitioner's motion to dismiss, saying, *inter alia*, in substance that a ruling on the present issue would affect "the course and conduct of pending and future litigation of a similar character throughout the country." And when this case was pending on appeal, the United States, for good cause shown, secured two successive extensions of time within which to file its brief. In the first motion for an extension of time it was stated by counsel for the United States that "This case is of great importance, * * * ", and in the motion for the second extension of time it was stated "Further, that this matter involves a very serious legal question involving many mil-

[15]Chief Justice Hughes, speaking for the Court in **United States v. Bank of New York & Trust Co.**, 296 U. S. 477, 478, 80 L. Ed. 338.

lions of dollars to the United States Government in the instant case and may well establish precedents in future cases and the Government is in need of this additional time for the purpose of more fully researching the problems presented and to overcome the handicaps due to illness stated above."

It is true that this controversy on the merits involves enormous values, which fact, although introducing an additional element of importance in the present case, should not be allowed to becloud the vital importance of the legal questions presented by this petition. The United States has acquired, or has attempted to acquire, title to vast areas of land in the State of Louisiana[16], and although no figures are available to petitioner, it is a matter of common knowledge that many similar acquisitions throughout the country have been consummated within recent years.

CONCLUSION.

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

VANCE PLAUCHE,
SAMUEL W. PLAUCHE, JR.,
Counsel for Petitioner.

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[16]In **United States v. Nebo Oil Co.**, 90 F. Supp. 73, 100, (involving the same 1940 Louisiana Statute which is the foundation of petitioner's claim to the minerals involved in this case on the merits), District Judge Porterie stated: "Moreover, the Federal Government is the largest landowner in Louisiana, and the dedication of large tracts for public purposes, such as forests and game preserves, withdraws these lands from commerce. It would appear entirely reasonable under these circumstances for the Louisiana Legislature to do all in its power to preserve the mineral rights in its citizens.

APPENDIX A.

ACT No. 315

AN ACT

Providing that when land is acquired by conventional deed or contract, condemnation or expropriation proceedings by the United States of America, or any of its subdivisions or agencies, from any person, firm or corporation, and the act of acquisition, verdict or judgment contains a reservation of oil, gas and/or other minerals or royalties or provides that said land passes subject to a prior sale or reservation of oil, gas and/or other minerals or royalties, still extant, said rights so reserved or previously sold shall be imprescriptible; and repealing Acts 68 and 151 of 1938 and other laws, general or special, inconsistent herewith.

Section 1. Be it enacted by the Legislature of Louisiana, That when land is acquired by conventional deed or contract, condemnation or expropriation proceedings by the United States of America, or any of its subdivisions or agencies, from any person, firm or corporation, and by the act of acquisition, verdict or judgment, oil, gas, and/or other minerals or royalties are reserved, or the land so acquired is by the act of acquisition conveyed subject to a prior sale or reservation of oil, gas and/or other minerals or royalties, still in force and effect, said rights so reserved or previously sold shall be imprescriptible.

Section 2. That Act 68 and Act 151 of 1938 and all other laws or parts of laws, general or special, in conflict herewith are hereby repealed.

Approved by the Governor: July 20, 1940

APPENDIX B.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 1527.

THE LEITER MINERALS, INC.,
Appellant,

versus

UNITED STATES OF AMERICA, ET AL.,
Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana.

(June 30, 1955.)

Before HOLMES and BORAH, Circuit Judges, and DAWKINS, District Judge.

BORAH, Circuit Judge: This is an action by the United States of America to quiet its title to the minerals and mineral rights which underlie certain lands in Plaquemines Parish, Louisiana; to cancel and have removed as clouds on that title the instruments evidencing appellant's claimed ownership of the same property; and as incidental thereto, to enjoin the prosecution of a petitory action now pending in the district court for Plaquemines Parish,

brought by the appellant in this suit against Allen L. Lobrano, a mineral lessee of the United States, and The California Company which has an operating agreement with the Government's lessee, to establish its asserted claim of title to, and right to possession of, the minerals under the land in suit.

This appeal is from an interlocutory order granting a preliminary injunction restraining the appellants, their agents, principals, and all other persons whomsoever acting with them from prosecuting or attempting to prosecute its title suit in the State court pending the determination of this action; and also, from those parts of the same order denying appellant's motion to dismiss or alternatively to stay all further proceedings in the Federal court.

While we believe that the right of appeal is conferred only in respect to that portion of the order which granted the preliminary injunction[1] it is not our understanding that we are authorized to consider only the injunctive phase of the order, but that we may and should also examine that portion of the interlocutory order denying the motion to dismiss or stay, although normally such denial would be appealable only after a final decree. *Deckert v. Independence Corp.*, 311 U. S. 282. Appellant's motion sought to dismiss this action or to stay proceedings in it until the State court suit had been determined, on the ground that the State court had previously assumed jurisdiction of the controversy and of the property involved. For the reasons hereinafter set forth we hold that this motion was correctly denied.

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[1] 28 U. S. C., Section 1292(1).

The complaint alleges that, pursuant to a contract of purchase and sale of March 14, 1935, between the United States and the executors and trustees of the Estate of Joseph Leiter, on December 21, 1938, conveyed to the United States approximately 8,711 acres of land in Plaquemines Parish, Louisiana. The deed contained a mineral reservation identical to that contained in the earlier agreement of March 14, 1935. The text of the mineral reservation is set forth in full in the complaint and the following is a summary of its provisions: The vendor reserved until April 1, 1945, the right to mine and remove all oil, gas and other valuable minerals; provided, that if for three years prior to April 1, 1945, mineral operations were conducted to commercial advantage for an average of at least 50 days per year, the mineral rights were to be extended for a further period of five years, but the right so extended would be limited to an area of twenty-five acres around each well producing or being drilled or developed on April 1, 1945. This right to mine as previously stated was to be further extended for additional periods of five years whenever operations during the preceding five years had been on an average of 50 days per year during this period. It was further provided that "at the termination of any extended period in case the operations has not been carried on for the number of days stated, the right to mine shall terminate, and complete fee in the land become vested in the United States." After setting forth these facts the complaint alleges that no mineral operations within the meaning of the reservation were ever conducted on the land by the vendor or the appellant or anyone acting under or through them. Then follow the allegations that on March 1, 1949, the United States executed mineral leases covering portions of the property conveyed to it by

Leiter to Frank J. and Albert Lobrano; that the Lobranos conveyed the operating rights under the leases to The California Company; that The California Company has drilled and completed 80 producing wells on the property, has produced and is now producing oil and gas in large quantities and that the United States has heretofore received more than $3,500,000 in royalties. Continuous physical possession of the land by the United States since the date of its acquisition and of the minerals through its lessees are also set forth. The complaint further alleges that The Leiter Minerals, Inc., appellant herein, is wrongfully claiming to be the owner of the minerals beneath the property and has caused to be recorded certain instruments constituting clouds upon the title of the United States. It then sets forth the institution and nature of the action filed by appellant in the district court of Plaquemines Parish and states that the United States is entitled to have its title to the mineral rights quieted as against any claims of appellant and the clouds upon its title removed.

We have no misgivings as to the sufficiency of the complaint and believe that the appellee is on firm ground in contending that in this suit, wherein the United States is plaintiff, the district court under the clear provisions of the statute (28 U. S. C., Section 1345) became vested with exclusive jurisdiction to determine the title of the United States to the mineral rights claimed by appellant. All the parties necessary to make this determination were before the court and the court had jurisdiction to grant the relief prayed. *Humble Oil & Refining Co. v. Sun Oil Co.*, 5 Cir., 191 F. (2d) 705.

In the state court action appellant as successor to Thomas Leiter claimed that it was the owner of all the

minerals and all the mineral rights in, on, or that may be under the lands conveyed to the United States by Leiter by virtue of the mineral reservation contained in that deed. Obviously the controversy as to title is between the appellant and the United States, not between the appellant and the Government's mineral lessees, and from this it follows that the United States is an indispensable party. The appellant can obtain effective relief with respect to title only against it. But the United States is not a party, and because of its sovereign immunity from suit it cannot be made one without its consent, which it withholds. *Minnesota v. United States*, 305 U. S. 382; *Naganab v. Hitchcock*, 202 U. S. 473; *Louisiana v. Garfield*, 211 U. S. 70; *Stanley v. Schwalby*, 162 U. S. 255. Furthermore, the United States cannot lawfully intervene in the pending state court action as a party defendant as appellant argues it can and must because no officer or agent of the United States has the power or authority to litigate the title of the United States in the state court action. *United States v. Shaw*, 309 U. S. 495; *United States v. U. S. Fidelity & Guaranty Co.*, 309 U. S. 506; *Stanley v. Schwalby, supra; Carr v. United States*, 98 U. S. 433.

The decision in *United States v. Bank of New York & Trust Co.*, 296 U. S. 463, upon which appellant strongly relies does not run counter to the views which we have expressed, because there, the Government had filed suit in the Federal Court to assert its clain to a fund in the possession of "stakeholders" or "depositaries" of the state court, and the Supreme Court, in affirming the dismissal of the Government's suit, simply held, in effect, that the United States should proceed by intervention in the State court action to distribute the fund since "the United States

would be an actor—voluntarily asserting what it deemed to be its rights—and not a defendant." 296 U. S. 463, 480.

The rule as to *in rem* actions which appellant invokes is predicated upon principles of comity between State and Federal courts of concurrent jurisdiction[2], and it has no application here because the District Court, wherein the United States is plaintiff, has exclusive jurisdiction to determine the title of the United States to the minerals and mineral rights claimed by the appellant.

In the light of the foregoing, we hold that the District Judge, under the applicable statute (28 U. S. C., Section 2283), was right in concluding that a preliminary injunction should issue to preserve the status quo in order to prevent irreparable injury, and we adopt and quote with approval the following from his published opinion:[3] ". . . should the state court proceeding come to final judgment dispossessing the mineral lessees of the United States before the litigation in federal courts is terminated, inestimable and irreparable damage will result to the United States from the interruption in the operations of its lessees on the premises, in the event the United States is ultimately declared the owner of the property in suit. This contingency can be avoided only by an abatement of the state court action." See *United States v. McIntosh*, 57 F. (2d) 573, 580.

The order appealed from is AFFIRMED.

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[2]See Covell v. Heyman, 111 U. S. 176, 182.

[3]United States v. The Leiter Minerals, Inc., et als., 127 F. Supp. 439, 444.